

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Roanoke Division**

TRAVIS WAYNE TOLLEY
Plaintiff,

v.

Civil Action No. 7:19-cv-00863

BEN CALDWELL, et al.
Defendants.

**MOTION TO DISMISS OR IN THE ALTERNATIVE MOTION FOR SUMMARY
JUDGMENT ON BEHALF OF ALAN W. BUZZARD**

Comes now your Defendant, Alan W. Buzzard, by counsel, and moves the Court pursuant to Rule 12(b)(6) F.R.C.P. to dismiss the Complaint for failure to state a plausible claim for relief or in the alternative pursuant to Rule 12(d) and Rule 56 F.R.C.P. grant your Defendant summary judgment in his behalf as to all surviving claims against him after this Court's May 14, 2020 Memorandum Opinion and Order (Doc. #12 & Doc. #13).

A brief in support of this Motion to Dismiss or in the alternative Motion for Summary Judgment supported by Affidavit is filed this date and is incorporated herein.

WHEREFORE, your Defendant moves the Court to grant his Motion to Dismiss or in the alternative, based on his Affidavit, to convert the Motion to Dismiss pursuant to Rule 12(d) F.R.C.P. to a Rule 56 Motion for Summary Judgment and to grant that motion and dismiss the case against him with prejudice and award him his costs in his behalf expended.

ALAN W. BUZZARD

By Counsel

s/Richard H. Milnor
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Counsel for Alan W. Buzzard

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of August, 2020, I electronically filed the foregoing Motion with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record, and that a copy was mailed to Plaintiff at:

Travis Wayne Tolley
10646256
Albemarle-Charlottesville Regional Jail
160 Peregrory Lane
Charlottesville VA 22902
Pro Se Plaintiff

s/Richard H. Milnor
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